

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
Hill Country Real Estate Development Corp.)	File No. EB-02-DL-078
Owner of Antenna Structure # 1061297 in)	NAL/Acct. No. 200232500008
Junction, Texas)	FRN 0006-7409-14
Chevy Chase, Maryland)	

FORFEITURE ORDER

Adopted: October 16, 2003

Released: October 20, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000.00) to Hill Country Real Estate Development Corp. (“Hill Country”), owner of antenna structure registration (“ASR”) # 1061297, located in Junction, Texas, for willful and repeated violations of the antenna structure painting, lighting and registration requirements of Section 303(q) of the Communications Act of 1934, as amended (the “Act”),¹ and Sections 17.50, 17.51, and 17.57 of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. On September 30, 2002, the Commission’s Dallas, Texas Office (“Dallas Office”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Hill Country for a forfeiture in the amount of thirteen thousand dollars (\$13,000.00).³ Specifically, the NAL proposed a \$10,000 forfeiture for Hill Country’s apparent willful and repeated violations of Section 17.50 (failure to clean and repaint an antenna structure), and apparent willful and repeated violations of Section 17.51 (failure to exhibit red obstruction lighting from sunset to sunrise). The NAL also proposed a \$3,000 forfeiture for Hill Country’s apparent willful and repeated violations of Section 17.57 (failure to “immediately” notify the Commission of the change in ownership of an antenna structure).

3. Hill Country filed its response to the NAL on October 17, 2002.⁴ In response to the NAL,

¹ 47 U.S.C. § 303(q). Section 303(q) authorizes the Commission to require that owners of antenna towers, which constitute or potentially constitute “a menace to air navigation . . . maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this Section.”

² 47 C.F.R. §§ 17.50, 17.51, 17.57.

³ See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232500008 (Enf. Bur. Dallas, Texas Office, September 30, 2002).

⁴ See Letter from Steven J. Hamrick, Esq. to Joseph Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission (October 17, 2002) (“October 17 Response”).

Hill Country seeks a reduction of the forfeiture based upon “its history of overall compliance with the Commission’s Rules.”⁵

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining Hill Country’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹ As explained below, having considered Hill Country’s reliance upon past history, we do not find mitigating evidence that warrants a reduction of the assessed forfeiture.

5. According to Commission records, Kent S. Foster, president of Hill Country, is also the principal and owner of Concho Cellular Telephone Co., Inc. (“Concho”). Commission records further indicate that, while Hill Country’s past history is unblemished, Concho’s appears not to be. Specifically, Commission records reflect that Concho has received several verbal warnings and Notices of Violations regarding its apparent failure to comply with the Commission’s antenna structure maintenance (painting and lighting) requirements.¹⁰ Given the relationship between and the common control of Hill Country and Concho, we do not believe that reduction of the \$13,000 forfeiture is warranted.¹¹

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² Hill Country Real Estate Development Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000.00) for its failure to clean and repaint an antenna structure, failure to exhibit red obstruction lighting from sunset to sunrise, and failure to “immediately” notify the Commission of the change in ownership of an antenna structure, in willful and repeated violations of Sections 17.50, 17.51 and 17.57 of the Rules.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

⁵ October 17 Response at 1.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ See, e.g., *Notice of Violation*, EB-02-DL-075 (Enf. Bur., Dallas, Texas Office, April 2, 2002) (notifying Concho that it violated 47 C.F.R. § 1.903(a) by operating from an unauthorized site from November 1, 2001 through March 15, 2002); *Notice of Violation*, EB-01-DL-126 (Enf. Bur., Dallas, Texas Office, January 16, 2001) (notifying Concho that it violated 47 C.F.R. § 17.48(a) by failing to provide FAA notice of a lighting outage); *Notice of Violation*, EB-00-DL-347 (Enf. Bur., Dallas, Texas Office, December 11, 2000) (notifying Concho that it violated 47 C.F.R. §§ 17.6(a) and 17.50 by failing to paint its antenna structure in accordance with ASR specifications)

¹¹ Cf. *CCN, Inc., et al.*, Order to Show Cause, 13 FCC Rcd 13599 (1998) (revoking the authority to provide resale interstate long distance telecommunications services based on a finding that principals, and certain of their commonly owned and controlled companies, engaged in slamming and other violations of the Act and the Rules).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.¹³ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232500008 and FRN 0006-7409-14. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to counsel for Hill Country, Steven J. Hamrick, Esq., Fleischman & Walsh, 1400 16th Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.